are found in early cases, decided before the full recognition of the law of unfair competition, and are apparently confined to the expressions of a single judge.[12] There are also certain code sections which bear upon the question. Section 3199 of the Political Code provides that any person who has first adopted and used a trademark or name, whether within or beyond the limits of this state, is its original owner.[13] The Civil Code enumerates trademarks among things which may be the subject of property.[14] Should the situation which arose in the principal case arise in California, and should a person employ in good faith a trademark previously adopted in some other locality, it would probably be contended that the code sections establish in the prior appropriator a right in gross to his trademark, in advance of the actual extension of his trade. But the primary purpose of section 3199 of the Political Code appears to be to limit the effect of the two sections which precede it. These provide that any person may record any trademark, that the Secretary of State shall keep a public record of such marks, and refuse to accept infringing marks. Section 3199 negatives the possible inference that a person might secure the right to use another's mark by being the first to record it. The section makes prior adoption and use, not prior recordation, the basis of the right. And as for Section 655 of the Civil Code, it need only be said that trademarks are property in the sense that they are an element of business good will, though in no other sense. It seems that there is no real obstacle in California to the acceptance of the advanced doctrine adopted by the United States Supreme Court.

A. R. R.

WILLS: THE SUFFICIENCY OF A LETTER AS AN OLOGRAPHIC WILL.—In the *Estate of Dexter*,[1] the document admitted to probate as a will was as follows:

"Woodland, May 9, 1904.

"I have stated to you before that I wish you to administer on my estate, when it has to be. So will put it in writing.

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history will recall many scenes wherein his deadly and easily concealed weapon played a part.

[12] See the quotation from the decision of Mr. Justice Rhodes in Derringer v. Plate, supra, n. 1, and also his expressions in Burke v. Cassin (1873) 45 Cal. 467, 479.

[13] Between 1872 and 1885 section 3199 contained also a further requirement that the mark be recorded with the Secretary of State. See Whittier v. Dietz (1884) 66 Cal. 78, 4 Pac. 965. This requirement was not in force prior to the code. Cal. Stats. 1863, p. 157. It was abolished by amendment. Cal. Stats. 1885, p. 94.

[14] Cal. Civ. Code, § 655. See also § 991.

[1] (1918) 56 Cal. Dec. 446. See prior notes on the general subject in 5 California Law Review, 266, 354 and 503, and article by Nat Schmulowitz, The Execution of Wills in California, 5 California Law Review, 377, 452.

Distributed equally among my nieces and nephews. You receive your pay besides out of the estate.

"Your Aunt, Mrs. H. W. Dexter.

"To
Charles H. Wright."

This writing was in the form of an addendum written upon a sheet of paper upon which Mrs. Dexter had, on May 8, 1904, written a letter referring to matters of family interest, and the fact that she was about to go on a visit for some length of time. On appeal, it was held properly admitted to probate as the last will and testament of the writer.

One question in every letter propounded as a will is, what was the intention of the deceased in giving expression to the language employed in the instrument, and this should be ascertained by a consideration of the whole document in the light of the circumstances under which it was written. Considering the terms of this letter, it is evident that it was prepared in view of her possible death; the words, "when it has to be," show this.

The case though itself perfectly clear suggests the general question as to what is sufficient to constitute a letter a will. The general rule seems to be that any instrument, executed with the formalities of a will, no matter in what form, if revocable by the maker, and not to take effect until his death, may be construed as testamentary and admitted to probate, especially if shown to have been intended by him to have that character.[2] It is not necessary for the writer to know that the paper which he writes will fully accomplish his purposes. It is sufficient that he manifest his wish that, on his death, his property, or some part of it, shall go to another person by him designated.[3]

We rarely find a letter attested,[4] but the usual form that it takes when it acts as a will is that of an olographic will. It is essential to its validity as such that the requirements prescribed by statute shall be complied with; that is, it must be "entirely written, dated and signed by the hand of the testator himself."[5] If not, the will is void, no matter how clearly it conveys the wishes of the decedent. The privilege of making testamentary disposition of property is not an inherent or even a constitutional right but wholly statutory; and since the legislature has seen fit to impose certain requirements looking to the execution of a

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[2] 41 L. R. A. (N. S.) 40; Cachard, The Code Civil, § 895.

[3] Appeal of Knox (1890) 131 Pa. St. 220, 18 Atl. 1021; Outlaw v. Hurdle (1853) 46 N. C. 147; Webster v. Lowe (1899) 107 Ky. 293, 53 S. W. 1030; Clarke v. Ransom (1875) 50 Cal. 595; In re Anderson (1916) 173 Cal. 235, 159 Pac. 426; In re Keith (1916) 173 Cal. 276, 159 Pac. 705; the Code Civil, § 967.

[4] Boyd v. Boyd (1833) 6 Gill & J. (Md.) 25; Cowley v. Knapp (1880) 42 N. J. Law 297; Gibson v. Van Syckle (1882) 47 Mich. 439, 11 N. W. 261.

[5] The Code Civil, § 970; Cal. Civ. Code, § 1277; Estate of Kustel (1884) 2 Coff. Prob. Dec. 1.

will, compliance with these exactions is absolutely necessary to the validity of any instrument offered as a testament.[6] The other tests are revocability, postponement of effect and testamentary intent.[7] Is this the will of the testator? That is all that a court of probate has to determine and it does this, as shown, from the surrounding circumstances and the face of the instrument.[8]

The modern olographic will arose in northern France but was later extended to all France by the Code Civil.[9] Through its recognition by the Code Napoleon it has influenced the law of other countries. It is recognized in fifteen of the states of this country, in Porto Rico and the Philippine Islands.[10] It was first permitted in California by the Civil Code of 1872, the provisions being adopted from the civil law.[11] Since its origin is French, the provisions of the French law on the subject are important in matters of interpretation. The decisions under the Statute of Louisiana with reference to olographic wills, which is itself based on the French *droit civil,* and which is similar to our own, are to the effect that the omission of any one of the requirements is fatal.[12]

Bigot-Préameneu and Pothier thought that the will made by a letter formed a distinct form of olographic will and was prohibited as the Ordinance of 1735 upon which are based the provisions of the Code Civil provides for three kinds of wills only—the olographic will, the public instrument and the mystic form of will.[13] Laurent says this is wrong: a letter written, dated and signed by the hand of him who has made a disposition *"à cause de mort"* is an olographic will and valid as such. True, it was prohibited by the Ordinance of 1735, but the French Code does not reproduce this defense. This was because the Ordinance did not consider the disposition contained in a letter as serious. Today the matter is left to the judge, that is, he is to examine the letter and if it contains a serious and definite disposition, it is to be admitted as a will.[14]

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[6] Estate of Carpenter (1916) 172 Cal. 268, 156 Pac. 464; In re Walker (1895) 110 Cal. 387, 390, 42 Pac. 815, 52 Am. St. Rep. 104; Estate of Price (1910) 14 Cal. App. 462, 463, 112 Pac. 482.

[7] Estate of Branick (1916) 172 Cal. 482, 157 Pac. 238; Estate of Meade (1897) 118 Cal. 428, 50 Pac. 541, 62 Am. St. Rep. 244; In re Richardson (1892) 94 Cal. 63, 29 Pac. 484, 15 L. R. A. 635.

[8] Clarke v. Ransom, supra, n. 3; Estate of Wood (1868) 36 Cal. 75; Estate of Dexter, supra, n. 1.

[9] 28 Yale Law Journal, 72 (Nov., 1918); Planiol, "Le Droit Civil," Tome 3, p. 660.

[10] Yale Law Journal, Nov., 1918, p. 76, notes, 23, 25; Porto Rico C. C., § 696; Philippine C. C., § 688.

[11] Estate of Zeile (1910) 5 Coff. Prob. Dec. 292.

[12] Estate of Vance (1916) 174 Cal. 122, 162 Pac. 103; Cal. Civ. Code, § 1277; Cachard, The Code Civil, § 970; La. Civ. Code, § 1588.

[13] F. Laurent, "Principes de Droit Civil," Tome 13, p. 189; M. Bugnet, "Oeuvres de Pothier," Tome 8, p. 228.

[14] M. Bugnet, id., p. 403.

The particular form, then, of an instrument intended to be testamentary is immaterial. This is true in both France and the United States.[15] Informal papers have been declared sufficient by our courts as wills and admitted to probate.[16] Also, instruments in the form of deeds or contracts have often been considered testamentary, and the statutory formalities of execution required for this validity. In such instances, in order that they may operate as dispositions, probate is necessary.[17] A last will and testament in the form of a letter is, therefore, valid, if either by virtue of the indulgence given to olographic wills or by sufficient attestation, the necessary proof of execution can be supplied.[18] In France, it has been settled that a letter complying with the code may be an olographic will in favor of the one to whom it is addressed. The letter to have such effect must show that the author wished to make a will and that his letter contains a definite intention on the part of the author to dispose of all or a part of his goods, such disposition to take effect after his death. It must be a present disposition, not an expression of intent to make a disposition; nor is a statement that he has already made a will a compliance with the required formalities, even though he then refer to it very positively.[19]

The first requisite under the French Code Civil, section 970, the Louisiana Civil Code, section 1588, and the California Civil Code, section 1277, is that the will shall be wholly written by the testator. In order to make an olographic will, the testator must know how to write; the French jurists hold that one word written by a strange hand makes it void.[20] This is true even when this word would be superfluous in the will; for no one could then say it was entirely written by the testator, which is an essential of this will.[21] It is likewise void, in France, if a third person has guided the hand of the testator to form the letters.[22] One may, however, ask another to write a form of will and by copying it, appropriate it to himself. But even here, he must understand what he writes. To do this, he must be able to read.[23] Planiol and Laurent maintain that if the third person renders simple material assistance to the

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[15] Arendt v. Arendt (1906) 80 Ark. 204, 96 S. W. 982; Clarke v. Ransom, supra, n. 3; F. Labori, "Repertoire de Droit Francais, Tome 12, p. 256, 257.

[16] Estate of Wood (1868) 36 Cal. 75; Mitchell v. Donohue (1893) 100 Cal. 202, 207, 34 Pac. 614, 38 Am. St. Rep. 279.

[17] Kinnebrew's Distributees v. Kinnebrew's Administrators (1860) 35 Ala. 628; Daniel v. Hill (1875) 52 Ala. 430; Hester v. Young (1847) 2 Ga. 31; In re Longer's Estate (1899) 108 Ia. 34, 78 N. W. 834; Estate of Skerrett (1885) 67 Cal. 585, 8 Pac. 181.

[18] Supra, n. 4.

[19] F. Labori, p. 257; F. Laurent, p. 189.

[20] G. Baudry-Lacantinerie, "Precis de Droit Civil," Tome 3, p. 686.

[21] M. Bugnet, p. 229.

[22] G. Baudry-Lacantinerie, p. 686; Aubry et Rau, Tome 7, p. 102.

[23] F. Laurent, p. 72.

hand of the testator it is valid; but invalid when he is incapable of knowing the value of the characters he traced.[24]

Interlineations are valid if written at the same time as the will, though not separately signed and dated.[25] If written after, such clause would not be dated, or would bear a false date, and that would annul the will under the French decisions. Planiol says that if later changes making new dispositions are specially dated and signed they will be valid as independent testaments.[26] So with an erasure—it depends on who did the erasing. If by a third person without the consent of the testator, it has no effect on the will. If still legible then the erased words are given effect; if not, it then results in a partial destruction of the instrument, and if a legatee is damaged he has an action against the one who did the erasing. However, if the erasing was done by the testator, such disposition is revoked or held not to exist. If it be an essential element of the olographic will, as the signature, that would destroy the will itself.[27] It should be noticed that in California the matter of revocation of olographic wills is governed by the same rules as control in the revocation of witnessed wills.

Both in France and in the United States the will may be written in pencil or with any other instrument and may be expressed in any language known to the writer.[28] In California, this liberality with respect to the material forms does not justify writing on the typewriter, even though done by the hand of the testator;[29] and if any part of the will is printed, the instrument is void.[30] If it is written on several sheets, it is not necessary either in France or in California that each be dated and signed, nor that they be fastened together by mechanical or other device. They must, however, depend on one another and form a single whole. It is not necessary that the testator mention that it has been written, dated and signed by him.[31]

The second requisite of the olographic will is that it be dated. The will is void in both France and California unless dated.[32] American cases hold that the word "date" means the

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[24] M. Planiol, p. 661; Laurent, p. 175.
[25] F. Laurent, p. 193.
[26] M. Planiol, p. 664.
[27] F. Laurent, p. 195; M. Bugnet, p. 229, 230.
[28] Heirs of Philbrick v. Spangler (1860) 15 La. Ann. 46; M. Planiol, p. 663; F. Laurent, p. 173.
[29] In re Dreyfus' Estate (1917) 175 Cal. 417, 165 Pac. 941; 5 California Law Review, 503.
[30] In re Plumel (1907) 151 Cal. 77, 79, 90 Pac. 192, 121 Am. St. Rep. 100; Billing's Estate (1884) 64 Cal. 427, 1 Pac. 701.
[31] F. Laurent, p. 178; Estate of Merryfield (1914) 167 Cal. 729, 141 Pac. 259; G. Baudry-Lacantinerie, p. 689.
[32] The Code Civil, § 970; Cal. Civ. Code, § 1277; Estate of Rand (1882) 61 Cal. 468, 474, 44 Am. Rep. 555; Billing's Estate, supra, n. 30; In re Plumel, supra, n. 30.

year, month and day.[33] A date which is incomplete because lacking a statement of the day, the month or the year of execution does not satisfy the statutory requirement of an olographic will.[34] "Date" refers only to time, however, and not to place or hour.[35] The date must be entirely in the handwriting of the testator. If it is printed in part the will is invalid.[36] However, assuming that the printing of part of the date vitiates the instrument as an olographic will, a codicil thereto written on the reverse side of the paper, entirely written, dated and signed by the hand of the testator remedies the defect in California upon the principle of republication.[37]

The place of the date is immaterial; it may be in the beginning or at the end, or even in the text of the will, provided, say the French commentators, that it is intended as a date.[38] It ought ordinarily to precede the signature, but may follow it or be on the same line. In both France and California, the date may be specified with reference to events; for example, Xmas, 1918, instead of December 25, 1918, would suffice.[39] In the former place, it may even be a reference to a private event, as the birthday of a certain person, when that is definitely known. Truth in the date is a requirement under French law, but the true date need not be expressed under the California decisions.[40] The writing of the will need not be completed in one day.[41] If parts are written on different days, each part may be signed and dated, but this is not necessary, the final signature and date suffice. Well-known abbreviations may be used; for example, 4-14-07; but "Winters, Yolo Co., 10, 1912" is insufficient.[42] While the will is void, if the date is incomplete, some commentators argue that it may be remedied if the error was involuntary and the contents show the true date. Laurent and the court of Cassation agree, however, that a false date is the

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[33] Estate of Price, supra, n. 6; Estate of Anthony (1913) 21 Cal. App. 157, 131 Pac. 96; Heffner v. Heffner (1896) 48 La. Ann. 1088, 20 So. 281.

[34] F. Laurent, p. 201, 204; G. Baudry-Lacantinerie, p. 686, 687; Estate of Vance, supra, n. 12.

[35] Estate of Fay (1904) 145 Cal. 82, 78 Pac. 340, 104 Am. St. Rep. 17; Estate of Clisby (1904) 145 Cal. 407, 78 Pac. 964; M. Planiol, p. 663.

[36] Billing's Estate, supra, n. 30.

[37] Estate of Plumel, 5 Coff. Prob. Dec. 243.

[38] F. Laurent, p. 229-231; M. Planiol, p. 662.

[39] In re Vance, supra, n. 12; Estate of Fay, supra, n. 35; Estate of Clisby, supra, n. 35; M. Planiol, p. 662.

[40] M. Planiol, p. 662; Laurent, p. 200; G. Baudry-Lacantinerie, p. 687; Estate of Fay, supra, n. 35; Estate of Carpenter (1916) 172 Cal. 268, 156 Pac. 464; 5 California Law Review, 266.

[41] Stead v. Curtis (1911) 191 Fed. 529; Estate of Carpenter, supra, n. 40.

[42] F. Laurent, p. 228; In re Plumel, supra, n. 30; Estate of Lakemeyer (1901) 135 Cal. 28, 66 Pac. 961, 87 Am. St. Rep. 96; Estate of Carpenter, supra, n. 40.

same as none and the date is false when the will is ante-dated or post-dated.[43]

The third and last requisite is that the will be signed by the testator. With respect to the signature it may be observed that according to the continental doctrines it must be at the end of the instrument, although it may be followed by the date. It cannot be in the body of the instrument.[44] In France, it has been held that the signature may be on the envelope of the will, if that envelope can be considered as part of the will, forming with it an inseparable whole.[45] A contrary decision was reached in California, in the case of In re Manchester.[46] Here, the signature need not be at the end and may be in the body of the instrument.[47] But where the signature is not at the end, it must appear from the face of the will that it was placed where it was for the purpose of execution.[48]

In France, the initials of the testator are not a sufficient signature, although the testator was in the habit of so signing; nor is a sign sufficient.[49] The family name (with or without the given name) constitutes the signature in the eyes of the law. There is, however, some authority to the contrary, holding that it is sufficient if the testator sign as he habitually would.[50] In this country, the first name has been held sufficient, when it was shown that the testator habitually signed his first name alone and intended a complete execution of the instrument.[51] This, it seems, would be a dangerous principle to establish universally. The rule in California seems to be that wherever placed, the fact that it was intended as an executing signature must satisfactorily appear on the face of the document itself. If at the end of the document, the universal custom of mankind forces the conclusion that it was appended as an execution, if nothing to the contrary appears. If placed elsewhere, it is for the court to say, from an inspection of the whole document, its language as well as its form, and the relative position of its parts, whether or not there is a positive and satisfactory inference from the document itself that the signature was so placed with the intent that it should there serve as a token of execution. If such inference thus appears, the execution may

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[43] F. Laurent, p. 217.
[44] Yale Law Journal, Nov. 1918, p. 77, 34.
[45] F. Laurent, 229-230; F. Labori, p. 257.
[46] In re Manchester (1917) 174 Cal. 417, 163 Pac. 358, Ann. Cas. 1918 B, 227; 5 California Law Review, 354.
[47] In re Stratton (1896) 112 Cal. 513, 44 Pac. 1028; In re Camp's Estate (1901) 134 Cal. 233, 65 Pac. 134.
[48] In re McMahon (1917) 174 Cal. 423, 163 Pac. 669; 5 California Law Review, 354.
[49] The Code Civil, § 970; F. Laurent, p. 243.
[50] M. Planiol, p. 662; F. Laurent, p. 246.
[51] Appeal of Knox (1890) 131 Pa. 220, 18 Atl. 1021.

be considered as proved by such signature.[52] Where the name appears only in the initial clause of an olographic will, it is not signed within the meaning of the statute.[53]

The fact that words non-essential to the will follow the signature does not affect the validity of the will.[54] The omission of one or more letters from the signature does not vitiate it, provided it is certain that the name is that of the testator. The will is valid even though the piece of paper on which it is written is torn in part, or part of the signature has disappeared by accident, if what remains shows it to be that of the testator.[55] But if the signature is intentionally removed by the testator, one of the essentials of the olographic will is removed. Laurent and Pothier think the signature should close all, and all that precedes it constitutes the act. Following this theory, a postscript is without date, unless in some way indicated as attached to the body of the will. They prefer the strict rule approved by the Court of Cassation of France that every testamentary disposition ought to be dated, especially where it is independent of the will.[56]

M. H. V. G.

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[52] Estate of Manchester, supra, n. 46; 5 California Law Review, 354.
[53] Estate of Manchester, supra, n. 46; Estate of Hurley (1918) 56 Cal. Dec. 190.
[54] F. Laurent, p. 242.
[55] F. Laurent, p. 246.
[56] F. Laurent, p. 234-339, 249; M. Bugnet, Tome 1, p. 403.